

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GREG GALE,

Plaintiff,

v.

NEW CANAAN INVESTMENTS, LLC,

Defendant.

No. C 14-2485 CW

ORDER GRANTING  
DEFENDANT'S MOTION  
TO DISMISS  
PLAINTIFF'S  
COMPLAINT (Docket  
No. 6)

Defendant New Canaan Investments, LLC moves to dismiss Plaintiff Greg Gale's complaint for fraudulent transfer. Mr. Gale has filed an opposition, and New Canaan has filed a reply. Having considered the papers, the Court GRANTS New Canaan's motion to dismiss.

FACTUAL BACKGROUND

I. Request for Judicial Notice

New Canaan asks that the Court take judicial notice of several documents. Defendant's Request for Judicial Notice (RFJN), Docket Nos. 7, 17 and 20, Exs. A-0. Mr. Gale opposes this request, in its entirety, for failure to demonstrate that judicial notice is appropriate and because New Canaan relies on the veracity of the facts found in the documents rather than only the existence of the documents. "[A] court may take judicial notice of matters of public record." Sami v. Wells Fargo Bank, 2012 WL 967051, at \*4 (N.D. Cal.) (citation omitted). "As a general rule, we may not consider any material beyond the pleadings in ruling on a Rule 12(b)(6) motion. . . . More specifically, we may not, on the basis of evidence outside of the Complaint, take judicial

1 notice of facts favorable to Defendants that could reasonably be  
2 disputed.” United States v. Corinthian Colleges, 655 F.3d 984,  
3 998-99 (9th Cir. 2011).

4 Exhibit A is a copy of the May 6, 2004 judgment against Mr.  
5 Gale. Mr. Gale refers to the judgment in Compl. ¶ 10. Hence, it  
6 is appropriate for judicial notice.

7 Exhibit B is a copy of the December 10, 2013 Acknowledgment  
8 of the Assignment of Judgment between the Davises and New Canaan.  
9 Mr. Gale refers to this transaction many times in the Complaint.  
10 Hence, it is appropriate for judicial notice.

11 Exhibits C and D are copies of excerpts of Mrs. Davis’s  
12 December 11, 2013 bankruptcy filing in the Central District of  
13 California. Plaintiff refers to this filing in Compl. ¶ 18.  
14 Hence, they are appropriate for judicial notice.

15 Exhibits E through H are copies of documents filed in the  
16 Napa County Superior Court in relation to a February 14, 2014  
17 first amended complaint for fraudulent transfer filed by Mr. Gale  
18 against New Canaan. While Mr. Gale does not refer to these  
19 documents in his Complaint, the documents are a matter of public  
20 record and are relevant to the issue of whether collateral  
21 estoppel applies in this case. Hence, they are appropriate for  
22 judicial notice.

23 Exhibits I and J are copies of filings made by Mr. Gale in  
24 the Bankruptcy Court of the Central District of California. These  
25 documents request permission to bring avoidance claims against New  
26 Canaan and its attorney on behalf of Mrs. Davis’s bankruptcy  
27 estate. These documents are a matter of public record. Hence,  
28 they are appropriate for judicial notice.

1 Exhibits K and L are copies of documents related to the  
2 appointment of a trustee over Mrs. Davis's bankruptcy estate.  
3 These documents are a matter of public record. Hence, they are  
4 appropriate for judicial notice.

5 Exhibit M is a copy of an August 1, 2014 complaint filed by  
6 Mr. Gale in the Bankruptcy Court of the Central District of  
7 California requesting that Mrs. Davis's bankruptcy discharge be  
8 denied due to the alleged fraudulent transfer. This document is a  
9 matter of public record. Hence it is appropriate for judicial  
10 notice.

11 Exhibits N and O are excerpts taken from Exhibit M. They are  
12 duplicative and, hence, need not be judicially noticed.

13 Mr. Gale requests that the Court take notice of a copy of a  
14 document which purports to show that, on March 28, 2014, Mrs.  
15 Davis listed the judgment against Mr. Gale in her husband's  
16 probate estate at a value of \$52,500. Declaration of Richard  
17 Moody, Docket No. 15-1, Ex. A. This document is a matter of  
18 public record. Hence, it is appropriate for judicial notice.

19 II. Facts

20 The following facts are taken from the complaint and  
21 documents of which the Court takes judicial notice.

22 In May 2004, Constance Davis and her husband, William Davis,  
23 obtained a civil judgment against Mr. Gale for \$509,993.22 (Gale  
24 Judgment). Compl. ¶ 10; RFJN, Ex. A. To date, it appears that  
25 none of the judgment has been paid.

26 In December 2010, Mr. Gale filed a civil suit in Napa  
27 Superior Court against Mr. and Mrs. Davis in which he sought  
28

1 "several million dollars in damages for the Davises' intentional  
2 interference with [his] prospective economic advantage." Id.

3 ¶ 11. Trial of that suit was scheduled to begin in December 2013.  
4 Id. ¶ 12. Sometime between the filing of that suit and the  
5 present date, Mr. Davis passed away.<sup>1</sup> Id.

6 Mr. Gale alleges that, in the May 22, 2012 filing Mrs. Davis  
7 made to establish her late husband's estate, Mrs. Davis listed Mr.  
8 Davis's property as valued at \$967,000.<sup>2</sup> Id. ¶ 20. Mr. Gale  
9 alleges, on information and belief, that the Gale Judgment  
10 comprised the property Mrs. Davis listed as part of her husband's  
11 estate. Id.

12 On December 5, 2013, New Canaan was established as a  
13 California limited liability corporation, with a principal place  
14 of business in Idaho and its sole member in Connecticut. Id.  
15 ¶ 13.

16 On December 10, 2013, Mrs. Davis purportedly sold the Gale  
17 Judgment to New Canaan for \$52,500. Id. ¶ 15; RFJN, Ex. B. Mr.  
18 Gale alleges that, with interest, the judgment had an approximate  
19 value of \$1,000,000. Id. ¶¶ 15, 21. Also on December 10, 2013,  
20 New Canaan filed a "Notice of Lien" in Mr. Gale's suit against  
21 Mrs. Davis. Id. ¶ 17.

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24 <sup>1</sup> The March 2014 probate document, of which Mr. Gale asks the  
25 Court to take judicial notice, notes the date of Mr. Davis's death  
as May 22, 2012.

26 <sup>2</sup> However, Mr. Gale asks the Court to take notice also of the  
27 March 2014 probate filing which shows Mrs. Davis listed the  
28 judgment at a value of \$52,500.

1 On December 11, 2013, Mrs. Davis filed for Chapter 7  
2 bankruptcy. Id. ¶ 18; RFJN, Exs. C and D. In the light of the  
3 bankruptcy proceedings, the Napa Superior Court stayed the trial  
4 date in Mr. Gale's suit against Mrs. Davis. Id. ¶ 19.

5 On February 14, 2014, Mr. Gale filed a complaint for  
6 Fraudulent Transfer in the California Superior Court for Napa  
7 County. RFJN, Ex. E. On April 4, 2014, the Napa County Superior  
8 Court sustained New Canaan's demurrer, dismissing the case without  
9 leave to amend. Id., Ex. F. The Napa County Superior Court held  
10 that Mr. Gale lacked standing to bring his suit given Mrs. Davis's  
11 bankruptcy filing. Id. The case is currently on appeal in the  
12 California Court of Appeal. Subsequent to that decision, Mr. Gale  
13 filed this suit for fraudulent transfer on May 29, 2014. New  
14 Canaan has filed, in accordance with Civil Local Rule 3-13, a  
15 Notice of Pendency of Related State Court Action. Docket No. 19.

#### 16 LEGAL STANDARDS

17 A complaint must contain a "short and plain statement of the  
18 claim showing that the pleader is entitled to relief." Fed. R.  
19 Civ. P. 8(a). The plaintiff must proffer "enough facts to state a  
20 claim to relief that is plausible on its face." Ashcroft v.  
21 Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v.  
22 Twombly, 550 U.S. 544, 570 (2007)). A claim is facially plausible  
23 "when the plaintiff pleads factual content that allows the court  
24 to draw the reasonable inference that the defendant is liable for  
25 the misconduct alleged." Id.

26 In considering whether the complaint is sufficient to state a  
27 claim, the court will take all material allegations as true and  
28 construe them in the light most favorable to the plaintiff.

1 Metzler Inv. GMBH v. Corinthian Colls., Inc., 540 F.3d 1049, 1061  
2 (9th Cir. 2008). The court's review is limited to the face of the  
3 complaint, materials incorporated into the complaint by reference,  
4 and facts of which the court may take judicial notice. Id.  
5 However, the court need not accept legal conclusions, including  
6 "threadbare recitals of the elements of a cause of action,  
7 supported by mere conclusory statements." Iqbal, 556 U.S. at 678  
8 (citing Twombly, 550 U.S. at 555).

9 When granting a motion to dismiss, the court is generally  
10 required to grant the plaintiff leave to amend, even if no request  
11 to amend the pleading was made, unless amendment would be futile.  
12 Cook, Perkiss & Liehe, Inc. v. N. Cal. Collection Serv. Inc., 911  
13 F.2d 242, 246-47 (9th Cir. 1990). In determining whether  
14 amendment would be futile, the court examines whether the  
15 complaint could be amended to cure the defect requiring dismissal  
16 "without contradicting any of the allegations of [the] original  
17 complaint." Reddy v. Litton Indus., Inc., 912 F.2d 291, 296 (9th  
18 Cir. 1990).

#### 19 DISCUSSION

20 New Canaan seeks to dismiss Mr. Gale's complaint in its  
21 entirety. First, it argues that, because Mr. Gale's identical  
22 claims in the California Superior Court were dismissed with  
23 prejudice, his claim in this Court is barred under the doctrine of  
24 collateral estoppel. Second, it argues that Mr. Gale lacks  
25 standing to bring this claim.  
26  
27  
28

1 I. Collateral Estoppel<sup>3</sup>

2 The doctrine of collateral estoppel, or issue preclusion,  
3 prohibits the re-litigation of any issues litigated to a final  
4 judgment in a prior action. People v. Burns, 198 Cal. App. 4th  
5 726 (2011). "A federal court must give to a state-court judgment  
6 the same preclusive effect as would be given that judgment under  
7 the law of the State in which the judgment was rendered." Migra  
8 v. Warren City Sch. Dist. Bd. of Educ., 465 U.S. 75, 81 (1984).  
9 Accordingly, because the state court judgment in question is a  
10 California judgment, this Court must apply California's law of  
11 collateral estoppel.

12 [In California,] [t]he prerequisites to applying collateral  
13 estoppel are (1) a claim or issue raised in the present  
14 action is identical to a claim or issue litigated in a prior  
15 proceeding; (2) the prior proceeding resulted in a final  
16 judgment on the merits; and (3) the party against whom the  
17 doctrine is being asserted was a party or in privity with a  
18 party to the prior proceeding.  
19 Burns, 198 Cal. App. 4th at 731 (citations, quotation marks, and  
20 alterations omitted). "[A]ccording to California law, a judgment  
21 is not final for purposes of collateral estoppel while open to  
22 direct attack, e.g., by appeal." Abelson v. Nat'l Union Fire Ins.  
23 Co., 28 Cal. App. 4th 776, 787 (1994).

24 Mr. Gale does not contest the argument that his state court  
25 claim and his district court complaint are identical. Both  
26 complaints allege the same facts, and both complaints bring a  
27 fraudulent transfer cause of action. Mr. Gale argues that because  
28 his state court suit against New Canaan is currently on appeal in

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27 <sup>3</sup> In its reply, New Canaan concedes that collateral estoppel  
28 is premature and does not apply.

1 the California Court of Appeal, there has been no state court  
2 final judgment on the merits. New Canaan does not dispute this  
3 fact. Hence, because there has not been a final judgment on the  
4 merits, the Court declines to dismiss the complaint due to  
5 collateral estoppel.<sup>4</sup>

6 However, the Court can choose to abstain from deciding this  
7 case under the doctrine of Colorado River Water Conservation Dist.  
8 v. United States, 424 U.S. 800 (1976). In Colorado River, the  
9 Supreme Court announced a balancing test, weighing four factors to  
10 determine whether sufficiently exceptional circumstances exist:  
11 (1) whether either court has assumed jurisdiction over property in  
12 dispute; (2) the relative convenience of the forums; (3) the  
13 desirability of avoiding piecemeal litigation; and (4) the order  
14 in which the concurrent forums obtained jurisdiction. Id. at 818.  
15 The Court stated: "No one factor is necessarily determinative; a  
16 carefully considered judgment taking into account both the  
17 obligation to exercise jurisdiction and the combination of factors  
18 counselling against that exercise is required." Id. at 818-19.  
19 "When a district court grants a stay under the Colorado River  
20 doctrine, it presumably concludes that the parallel state-court  
21 litigation will be an adequate vehicle for the complete and prompt  
22 resolution of the issues between the parties." Hanover Ins. Co.  
23 v. Fremont Bank, 2014 WL 4744398, at \*16 (N.D. Cal.)

24 \_\_\_\_\_  
25 <sup>4</sup> In addition to collateral estoppel, New Canaan argues that  
26 the Rooker-Feldman doctrine "prohibits a direct appeal from the  
27 final judgment of a state court." Docket No. 6 at 20. See  
28 Kousgasian v. TMSL, Inc., 359 F.3d 1136 (9th Cir. 2004). However,  
as discussed above, there has been no final state court judgment.  
Hence, the Rooker-Feldman doctrine does not apply.



Pursuant to the Colorado River doctrine, a court should stay a case that is sufficiently similar to an earlier filed case to preserve judicial resources and encourage comprehensive disposition of litigation. In cases involving the concurrent exercise of jurisdiction by different courts over parallel actions, a federal court has discretion to stay or dismiss an action based on considerations of wise judicial administration. Colorado River, 424 U.S. at 817; Aetna Life Ins. Co. v. Kohler, 2011 WL 1990658 (N.D. Cal.). The two actions need not exactly parallel each other to implicate the Colorado River doctrine; it is enough that the two cases are substantially similar. Nakash v. Marciano, 882 F.2d 1411, 1416 (9th Cir. 1989). However, the federal district courts have a "virtually unflagging obligation" to exercise their jurisdiction, Moses H. Cone Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 19 (1983), and should only invoke a stay or dismissal under the Colorado River doctrine in "exceptional circumstances," Colorado River, 424 U.S. at 817.

Here, New Canaan has filed, in accordance with Civil Local Rule 3-13, a Notice of Pendency of Related State Court Action. Docket No. 19. As is clear from a comparison of the state court complaint and the complaint filed in this case, both cases assert similar factual allegations, and the crux of the cases is the same: was the transfer of the Gale Judgment made by Mrs. Davis or the Estate of Mr. Davis, and was that transfer fraudulent given Mr. Gale's suit against the Davises. Both actions allege the same cause of action: fraudulent transfer pursuant to California's Uniform Fraudulent Transfer Act, California Civil Code section 3439.01. Prior to the filing of this case in this Court, the

1 Superior Court of Napa County had dismissed the case with  
2 prejudice, and the case is currently on appeal in the California  
3 Court of Appeal. Given that this Court could apply collateral  
4 estoppel when the Court of Appeal rules on Mr. Gale's appeal, it  
5 is highly desirable to avoid duplicate litigation prior to the  
6 Court of Appeal's ruling. Hence, the balance of the factors  
7 weighs heavily toward a stay.

8 Mr. Gale pointed out that New Canaan did not ask for a stay,  
9 and he asked for an opportunity to address a stay if one were  
10 requested. Hence, the Court gives him an opportunity to address  
11 the issue of whether a stay is appropriate at this time in the  
12 light of the California Court of Appeal's consideration of his  
13 appeal.

#### 14 II. Standing

15 New Canaan argues that even if Mr. Gale's complaint is not  
16 dismissed due to collateral estoppel, it should be dismissed for  
17 lack of standing pursuant to Federal Rule of Civil Procedure  
18 12(b)(1). It contends that, because Mrs. Davis owned and  
19 transferred the Gale Judgment, and because she is now in Chapter 7  
20 bankruptcy, "the right to challenge the transfer now vests  
21 exclusively in [the] Chapter 7 bankruptcy trustee." Docket No. 6  
22 at 5. Mr. Gale alleges that it was not Mrs. Davis who owned and  
23 transferred the judgment, but the Estate of William Davis. See  
24 Docket 15 at 7. Hence, Mr. Gale asserts that, because the Estate  
25 is not in bankruptcy, he has standing to sue as a creditor under  
26 California's Uniform Fraudulent Transfer Act.

27 This allegation forms the crux of this case. Mr. Gale admits  
28 that if Mrs. Davis had the authority to transfer her own interest

1 in the judgment against him, "the bankruptcy trustee should be the  
2 one bringing suit." Docket No. 15 at 7. Thus, to survive this  
3 Rule 12(b)(6) motion, Mr. Gale must state facts sufficient to  
4 support his allegation that Mrs. Davis was not the proper holder  
5 of the judgment, and, hence, was unauthorized to sell it.  
6 Otherwise, "[u]pon a declaration of bankruptcy, all of a  
7 petitioner's property becomes the property of the bankruptcy  
8 estate." Flowers v. Wells Fargo Bank, N.A., 2011 WL 2748650, at  
9 \*3 (N.D. Cal.); see also 11 U.S.C. § 541(a). Furthermore, "the  
10 estate becomes the only real party in interest unless the  
11 bankruptcy trustee abandons the claims." Id. If Mrs. Davis was  
12 the rightful transferor, and the bankruptcy trustee has not  
13 abandoned the claim, any cause of action for fraudulent transfer  
14 can only be brought by the bankruptcy trustee.

15 Mr. Gale alleges that "at an unknown point between May 2004  
16 and the present, the [Gale Judgment] became an asset of Mr. Davis,  
17 as confirmed by the filings made by Ms. Davis in the Estate of  
18 Davis matter. As such, the [Gale Judgment] became an asset of the  
19 Estate after Mr. Davis passed away." Compl. ¶ 10. Mr. Gale again  
20 makes this allegation in his Opposition: "Plaintiff properly  
21 alleges that the transfer was from the Estate of William Davis,  
22 which is not in bankruptcy, and that only the Estate -- not Ms.  
23 Davis -- had an interest in the Judgment Asset at the time of the  
24 transfer." Docket No. 15 at 7. He goes on to state, "Those  
25 allegations must be accepted as true as this stage." Id.

26 Mr. Gale is incorrect. As discussed above, to survive a Rule  
27 12(b)(6) motion, "the plaintiff must proffer enough facts to state  
28 a claim to relief that is plausible on its face." Ashcroft, 556

1 U.S. at 678 (citations omitted). Mr. Gale fails to allege any  
2 facts to support his accusation that Mrs. Davis's interest in the  
3 Gale Judgment was transferred to her husband.

4 Nor does Mr. Gale allege facts sufficient to support the  
5 allegation that the Gale Judgment belonged to the Estate at the  
6 time of the transfer. He alleges that Mrs. Davis, in her opening  
7 petition to establish her husband's estate after his death, listed  
8 an asset worth \$967,000 as Mr. Davis's personal property. Mr.  
9 Gale then states that, "on information and belief, that 'personal  
10 property' was comprised principally or entirely of the [Gale  
11 Judgment] valued as of the time of filing." Compl. ¶ 20. Mr.  
12 Gale does not state any facts to support his "information and  
13 belief." Thus, he does not state facts sufficient to support the  
14 accusation that the Estate was the sole owner of the Gale  
15 Judgment.

16 While the parties do not address this issue directly, it  
17 would appear that California's community property rules are  
18 relevant here. Under California law, there is a presumption that  
19 assets acquired during a marriage are community property: "Except  
20 as otherwise provided by statute, all property, real or personal,  
21 wherever situated, acquired by a married person during marriage  
22 while domiciled in California is community property. This  
23 includes recovery of or a contingent, future interest in the  
24 recovery of a lawsuit." In re Lewis, 515 B.R. 591, 598 (B.A.P.  
25 9th Cir. 2014) (citing Cal. Fam. Code § 760). See also In re  
26 Marriage of Valli, 58 Cal. 4th 1396, 1400 (2014). "[T]he party  
27 challenging the presumption . . . [bears] the burden of showing  
28 that the [assets] were not community property." Cal. Fam. Code

1 § 802; see also In re Marriage of Weaver, 127 Cal. App. 4th 858,  
2 864 (2005). Thus, it would appear that Mr. Gale must state facts  
3 sufficient to rebut the presumption that the Gale Judgment was  
4 community property. In any future motions, the parties shall  
5 address the issue of whether community property rules are  
6 applicable to this case.

7 If the Gale Judgment belonged, even in part, to Mrs. Davis,  
8 Mr. Gale's standing to bring this suit is also barred by the  
9 automatic stay triggered by Mrs. Davis's bankruptcy filing. Title  
10 11 U.S.C. § 362(a)(1) states,

11 [A] petition filed under section 301, 302, or 303 of this  
12 title . . . operates as a stay, applicable to all entities,  
13 of . . . the commencement or continuation . . . of a  
14 judicial, administrative, or other action or proceeding  
15 against the debtor that was or could have been commenced  
16 before the commencement of the case under this title, or to  
17 recover a claim against the debtor that arose before the  
18 commencement of the case under this title.

16 The phrase "or to recover a claim against the debtor"

17 encompass[es] cases in which the debtor is not a defendant;  
18 it would otherwise be totally duplicative of the former  
19 category and pure surplusage. Upon analysis, a third-party  
20 action to recover fraudulently transferred property is  
21 properly regarded as undertaken to "recover a claim against  
22 the debtor" and subject to the automatic stay pursuant to  
23 § 362(a)(1).

22 In re Colonial Realty, 980 F.2d 125, 131-132 (2nd Cir. 1992).

23 Thus, while Mr. Gale's cause of action for fraudulent transfer is  
24 ostensibly against New Canaan, it is also an action that seeks to  
25 recover (or preserve) possible damages in the suit filed against  
26 Mrs. Davis. "Absent a claim against the debtor, there is no  
27 independent basis for the action against the transferee." Id. at  
28 132. Accordingly, if the Gale Judgment belonged to Mrs. Davis in

1 whole or in part, the fraudulent transfer action against New  
2 Canaan would be subject to the automatic stay required under  
3 § 362(a)(1).

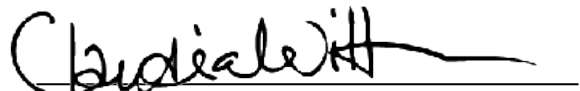
4 Therefore, Mr. Gale has not sufficiently alleged standing to  
5 bring this suit. Accordingly, the Court GRANTS New Canaan's  
6 motion to dismiss the complaint in its entirety for lack of  
7 standing. If the case is not stayed, or if the stay is lifted,  
8 Mr. Gale will be granted leave to remedy this deficiency in an  
9 amended pleading if he can do so truthfully and without  
10 contradicting his previous pleadings.

11 CONCLUSION

12 For the reasons set forth above, the Court GRANTS New  
13 Canaan's motion to dismiss (Docket No. 6). Within seven days of  
14 this order, Mr. Gale may file a brief of no more than ten pages  
15 stating why this case should not be stayed pending the California  
16 Court of Appeal decision. Within seven days of Mr. Gale's filing,  
17 if any, New Canaan may respond by filing a brief of no more than  
18 ten pages addressing Mr. Gale's arguments. Whether to issue a  
19 stay pending the California Court of Appeal's decision will be  
20 decided on the papers. If the case is not stayed, the Court will  
21 set a date for Mr. Gale to file his amended complaint.

22 IT IS SO ORDERED.

23 Dated: December 17, 2014



24 CLAUDIA WILKEN  
25 United States District Judge  
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27  
28